

**THIS DECISION HAS BEEN APPEALED. THE FOLLOWING
IS THE RELATED SOAH DECISION NUMBER:**

SOAH DOCKET NO. 453-05-3148.M5

MDR Tracking Number: M5-04-1590-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 02-03-04.

The IRO reviewed office visits with manipulation, therapeutic activities, neuromuscular re-education, myofascial release, joint mobilization, mechanical traction, electric stimulation unattended, administration and medical interpretation of developmental tasks, spinal manipulation, group therapy, manual therapy techniques, review of report, office visits rendered from 06-25-03 through 10-02-03 that were denied based upon "V".

The IRO determined that all services from 06-25-03 through 06-30-03 **were** medically necessary. The IRO reviewer determined that services in dispute after 06-30-03 **were not** medically necessary. The respondent raised no other reasons for denying reimbursement in the above listed services.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the **majority** of issues of medical necessity. Consequently, the requestor is not owed a refund of the paid IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 05-11-04, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14-days of the requestor's receipt of the Notice.

CPT code 99080-73 dates of service 07-23-03, 08-18-03 and 09-10-03 denied with denial code "V" (unnecessary medical with peer review). Per Rule 129.5 the TWCC-73 is a required report and is not subject to an IRO review. The Medical Review Division has jurisdiction in this matter. Per Rule 133.106(f)(1) reimbursement is recommended in the amount of \$45.00 (\$15.00 per date of service).

ORDER

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) and in accordance with Medicare program reimbursement methodologies for dates of service after August 1, 2003 per

Commission Rule 134.202(c) plus all accrued interest due at the time of payment to the requestor within 20-days of receipt of this order. This Decision is applicable for dates of service 06-25-03 through 06-30-03 and 07-23-03, 08-18-03 and 09-10-03 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Findings and Decision and Order are hereby issued this 29th day of October 2004.

Debra L. Hewitt
Medical Dispute Resolution Officer
Medical Review Division

DLH/dlh

NOTICE OF INDEPENDENT REVIEW DECISION

Date: April 30, 2004

RE: AMENDED DECISION

MDR Tracking #: M5-04-1590-01

IRO Certificate #: 5242

___ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to ___ for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

___ has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

Clinical History

It appears the claimant was trying to lift or move a gate with a coworker when one of the hinges broke on the gate causing the claimant to have to hold the gate up. The gate reportedly weighed close to 400 pounds; however, some of the documentation revealed the gate weighed around 150-200 pounds. Multiple chiropractic notes were reviewed including an appeal letter of sorts from ___, the treating chiropractor, dated 3/19/04. The claimant has undergone 3 epidural steroid injections in April, May and June 2003. The claimant's main complaints appeared to be headaches, along with some initial left arm pain or symptoms as well as mid-back pain and low back pain with right lower extremity pain. It appears the neck pain and thoracic spine complaints resolved fairly quickly and the main problem during the disputed dates of service involved the low back and right-sided radicular symptoms. The claimant has undergone upper and lower extremity electrodiagnostic testing and these tests were reportedly normal and did not show evidence of lumbar or cervical radiculopathy. The claimant continues to have a very high self perceived disability with respect to his low back. The claimant appears to do okay on pain medications; however, it appears that pain medications are the only thing that are keeping him functioning. The claimant was found to be at MMI on 7/25/03 with 0% impairment rating from ___. The claimant is seeing ___, a pain management specialist. The claimant is also seeing ___ for diagnostic testing. A peer review from an orthopedist by the name of ___ of 7/22/03 was reviewed. It was felt that chiropractic care had been excessive. A chiropractic peer review of 6/21/03 was reviewed as well. An MRI of the lumbar spine was reportedly normal for a patient of this age; however, a lumbar discogram/CT reportedly showed evidence of a left sided lateral disc herniation at L4/5 and a posterocentral herniation at the L5/S1 level. Again, the claimant mainly had right sided radicular problems. The claimant was sent for a thoracic spine MRI; however, there was incidental notation of a herniation at the C6/7 and C7/T1 levels. By my review of the report it appears the claimant had a protrusion at the C6/7 or C7/T1 level, not both levels. The claimant was also video taped in May 2003, "performing what I would consider to be a lot of yard work and household repair and he was noted to be able to do this quite easily." A follow up with ___ of 6/25/03 revealed the claimant to be having ongoing right sided radicular pain into the right leg along with "severe low back pain". The claimant was felt to be at MMI on 12/12/03 by ___ who saw the claimant for designated doctor evaluation purposes. The claimant was demonstrated to have some ongoing right sided antalgia. The claimant is reportedly approximately 53 years of age.

Requested Service(s)

The medical necessity of the outpatient services to include office visits with manipulations, therapeutic activities, neuromuscular re-education, myofascial release, joint mobilization, mechanical traction, electric stimulation unattended, administration and medical interpretation of developmental tasks, spinal manipulation, group therapy, manual therapy techniques, review of report, office visits for the dates of service to include 6/25/03 through 10/2/03.

Decision

I agree with the insurance carrier and find that a majority of the disputed dates of service or services were not medically necessary; however, I also disagree with the carrier and find that some of the services in dispute were reasonable and medically necessary. All services from

6/25/03 through 6/30/03 are felt to be medically necessary. All other services in dispute are not felt to be medically necessary.

Rationale/Basis for Decision

The documentation strongly suggests that despite voluminous amounts of chiropractic care and injections, the claimant has not progressed with respect to his low back problem. The claimant's cervical spine and mid-back appeared to improve rather quickly and were of no real clinical concern beyond at least April 2003. I certainly understand that the claimant has 2 disc protrusions in the lower neck and 2 disc protrusions in the low back as evidenced on a discogram/CT scan; however, in reality, the cervical disc protrusions were only found as an incidental finding when reviewing the thoracic spine MRI. The documentation in the form of the thoracic MRI report also suggests that there was only 1 protrusion and that it was either at the C6/7 level or the C7T1 level and not both levels. Again, this would be considered an incidental finding and not related to the injury, and would not serve as a justification for ongoing treatment especially given the claimant's vast improvement in these areas by March or April 2003. When a claimant has ongoing complaints that are non-responsive to voluminous amounts of chiropractic, this does not justify more of the same treatment. Time and time again the claimant stated it was the medications, or Vicodin, that kept him functioning. Multiple follow ups from ___, ___, and ___ made it quite clear that the claimant was non-responsive to chiropractic care when it came to the progression of his low back problem. The listed disputed dates of service began on 6/25/03, only 8 days after his 3rd epidural steroid injection, and it is my opinion that it is reasonable and customary for the claimant to undergo about 2 weeks of active care and physical therapy modality treatment following an epidural steroid injection. The 6/30/03 date of service came at about 2 weeks post epidural steroid injection and I saw no evidence of improvement beyond this date to substantiate further treatment, especially in light of the claimant's lack of improvement through over 6 months of chiropractic care and related physical therapy with epidural steroid injections. Again, ___ follow up report of 6/25/03, which was over 1 week after the last epidural steroid injection, stated the claimant had ongoing right sided leg pain and severe low back pain. This pattern has been repeating itself, or at least has been ongoing, for the last 5-6 months and the treatment plan needs to be changed. The claimant has clearly been non-responsive to chiropractic care and more of the same type of treatment is not likely to make a difference.